CODY LAIDLAW	*	**IN THE CIRCUIT COURT**
Plaintiff	*	**FOR**
v.	*	**BALTIMORE CITY**
BENEFICIAL BANCORP, INC., et al.	*	
Defendants	*	**Case No.: 24-C-17-001057**

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MEMORANDUM OPINION AND ORDER

The plaintiff, Cody Laidlaw, a stockholder of Beneficial Bancorp, Inc. ("Bancorp" or the "nominal defendant") since 2015, brings this action derivatively on Bancorp's behalf against defendants Edward G. Boehne, Karen Dougherty Buchholz, Gerard P. Cuddy, Michael J. Donahue, Frank A. Farnesi, Donald F. Gayhardt, Jr., Elizabeth H. Gemmill, Thomas J. Lewis, and Roy D. Yates (collectively, the "Board" or the "individual defendants") alleging breach of fiduciary duty and unjust enrichment. Amended Complaint ("Am. Compl.") ¶¶ 1–2, 15–26, 91–97 (Dkt. No. 4). After Bancorp completed a mutual-to-stock conversion in 2015, the Board voted to award themselves more than 1 million shares of Bancorp stock as part of a one-time compensation package on June 9, 2016. *Id.* ¶¶ 29–30, 45, 59. The plaintiff alleges that the Board engaged in improper self-dealing to the detriment of Bancorp by adopting the June 2016 stock award. Pending before the Court is the Board's motion to dismiss the complaint for failure to state a claim upon which relief may be granted pursuant to Maryland Rule 2-322(b)(2). *See generally* Defs.' Mot. Dismiss (Dkt. No. 6). For the reasons below, the defendants' motion is denied.

I. BACKGROUND

Beneficial Bancorp is a Maryland corporation that serves as the holding company for Beneficial Bank (the "Bank"), a Pennsylvania-chartered savings bank. Am. Compl. ¶ 16.

Founded in 1853, the Bank has in recent years undergone a series of corporate reorganizations. *See id.* ¶¶ 27, 29–30. In 2004, the Bank became a wholly-owned subsidiary of Beneficial Mutual Bancorp ("Mutual Bancorp"), an entity which was itself a wholly-owned subsidiary of Beneficial Savings Bank MHC ("MHC"), a federally-chartered mutual holding company. *Id.* ¶ 27. Beneficial Mutual Bancorp became a publicly-traded company in July of 2007, with an initial public offering of 23,606,625 shares representing 26% of Mutual Bancorp's outstanding common stock. *Id.* ¶ 28. MHC retained a 56% controlling stake in the mutual organization. *Id.*

On August 14, 2014, the Bank and its parent companies adopted a Plan of Conversion and Reorganization pursuant to which the Bank would reorganize as a fully public stock holding company and MHC would cease to exist. *Id.* ¶ 29. Bancorp, the nominal defendant, was founded to achieve this purpose, with defendants Boehne, Bucholz, Cuddy, Farnesi, Gayhardt, Gemmill, Lewis, and Yates serving as inaugural members of its board of directors. *See id.* ¶¶ 17–20, 21–26, 29. Over the next four months, Bancorp became the Bank's sole proprietor, shares in Mutual Bancorp were exchanged for stock in the new entity, and MHC—its shares in Mutual Bancorp having been cancelled—was dissolved. *Id.* The mutual-to-stock conversion was completed on January 12, 2015. *Id.* ¶ 30.

For their services to the corporation, Bancorp provided its non-employee directors[1] with compensation packages ranging in value from $62,786 to $105,911 in 2015, for an average total compensation of $77,521 per non-employee director.[2] *Id.* ¶ 35. Cuddy, the corporation's

[1] Defendants Boehne, Bucholz, Farnesi, Gayhardt, Gemmill, Lewis, and Yates served as Bancorp's non-employee directors for the entirety of 2015. *Id.* ¶ 33. Non-party Joseph J. McLaughlin served as a non-employee director until May of that year. *Id.* McLaughlin's seat sat vacant until September 2015, when defendant Donahue joined Bancorp's board of directors. *Id.*

[2] Defendant Donahue and non-party McLaughlin are excluded from these figures because they served less than the full year. *Id.* ¶ 35.

president/CEO and sole employee director, received cash, stock awards and other benefits totaling $1,712,889 during the same period. *Id.* ¶ 37.

On March 2, 2016, the Board—having been joined in September 2015 by defendant Donahue, *id.* ¶ 33—voted to adopt the 2016 Omnibus Incentive Plan (the "stock plan"). *Id.* ¶ 38. Under the stock plan, the Board reserved 3,500,000 shares of Bancorp common stock to be disbursed as compensation to the company's officers, employees, directors and other service providers at the direction and discretion of the Board upon the recommendation of its Compensation Committee. *Id.* ¶ 39. Bancorp stockholders approved the stock plan at the corporation's 2016 annual meeting on April 21, 2016. *Id.* ¶ 42. Although the stock plan vested broad discretion in the Board to disburse the reserved shares as needed, the proxy statement issued by the company to stockholders forecast that the 3.5 million share reserve would satisfy the company's compensation needs for the next five years. *Id.* ¶ 41, 43.

Seven weeks later on June 9, 2016, the directors, acting pursuant to the stock plan and approving the recommendation of the four-member Compensation Committee, awarded themselves 1,043,416 shares of reserved stock as a bonus for their role in the mutual-to-stock conversion. *Id.* ¶¶ 45–46, 59, 64, 66, 73. Under the terms of the award, Cuddy stands to receive 498,000 of these shares, valued at $6,787,740.[3] *Id.* ¶ 46. Farnesi, as board chairman, will receive 82,639 shares of Bancorp stock worth $1,126,370. *Id.* The remaining non-employee directors will each receive 66,111 shares valuing $901,093. *Id.* All told, the June 2016 stock award values more than $14 million. *Id.*

Without making demand on the Board, *id.* ¶ 87, the plaintiff filed this suit derivatively on behalf of Bancorp on March 3, 2017. An Amended Complaint (Dkt. No. 4) followed on April 6,

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[3] All share values are calculated based on the shares' $13.63 value at market closing on June 9, 2016. *Id.* ¶ 46.

2017. On May 19, 2017, the defendants moved to dismiss the complaint in its entirety (Dkt. No. 6). Plaintiff opposed the motion in his Response (Dkt. No. 6/1), filed June 23, 2017; the defendants filed their Reply (Dkt. No. 6/5) on July 18, 2017. The Court heard oral argument on the motion to dismiss on August 4, 2017 (Dkt. No. 6/3).

II. **LEGAL STANDARD**

To survive a motion to dismiss under Maryland Rule 2-322(b)(2), a complaint "must allege facts that, if proved, would entitle [the plaintiff] to relief." *Pittway Corp. v. Collins*, 409 Md. 218, 238 (2009) (citing *Arfaa v. Martino*, 404 Md. 364, 380–81 (2008)); *Shenker v. Laureate Education, Inc.*, 411 Md. 317, 335 (2009) ("[D]ismissal is proper] only if the allegations and permissible inferences, if true, would not afford relief to the plaintiff . . . ."). Although a complaint need not contain "facts sufficient to *prove* the claim" in order to withstand a Rule 2-322(b)(2) motion, *Lloyd v. GMC*, 397 Md. 108, 132 (2007), "[m]ere conclusory charges" are insufficient to state a cause of action, *id.* at 121. The complaint must allege "relevant and material facts" which, when considered with "all inferences that reasonably may be drawn therefrom," would entitle the plaintiff to the relief requested if proven at trial. *Shenker*, 411 Md. at 335; *Pittway Corp.*, 409 Md. at 238.

In considering a motion to dismiss for failure to plead a claim on which relief can be granted, the court must consider the complaint in its entirety, accepting all allegations in the complaint as true, even if doubtful in fact, and construe all reasonable inferences in favor of the plaintiff. *Shenker*, 411 Md. at 335 ("[The] Court [must] view[ ] all well-pleaded facts and the inferences from those facts in a light most favorable to the plaintiff, the non-moving party."); *Arffa v. Martino*, 404 Md. 364, 381 (2008) ("[A motion to dismiss should be granted] only if the alleged facts and permissible inferences, so viewed, would, if proven, nonetheless fail to afford

relief to the plaintiff." (citations omitted)); *George Wasserman & Janice Wasserman Goldstein Family LLC v. Kay*, 197 Md. App. 586, 607 (2011) (same).

III. DISCUSSION

Although the plaintiff is a stockholder in Bancorp, he has not sued the Board directly. He only brings claims derivatively on behalf of the corporation. Am. Compl. ¶¶ 1, 95, 99. In Count One, the plaintiff alleges that the Board breached their fiduciary duty of loyalty to the corporation by engaging in impermissible self-dealing. *Id.* ¶¶ 91–95. In Count Two, the plaintiff alleges that the June 2016 stock award constitutes unjust enrichment warranting disgorgement of the corporate stock awarded and the funds derived from the sale thereof. *Id.* ¶¶ 96–99. In moving to dismiss the complaint, the defendants assert three legal theories that are common to both claims and, separately, that the factual allegations found in the complaint are insufficient to state a claim for unjust enrichment under Maryland law. Defs.' Mot. Dismiss ¶¶ 2–4; Defs.' Mem. at 27–28.

a. Demand Requirement

Defendants move to dismiss the complaint in its entirety because the plaintiff failed to serve a pre-suit demand on the Board before commencing this derivative action. Defs.' Mem. at 16–23. Because the plaintiff's allegations give rise to an inference that demand would have been futile in this case, his complaint is not subject to dismissal on these grounds.

Although stockholders are the owners of a corporation, "the conduct of the corporation's affairs are placed in the hands of the board of directors." *Devereux v. Berger*, 264 Md. 20, 31–32 (1971). In order to maintain this balance of managerial power, a complaining stockholder, "generally speaking, . . . must make demand upon the corporat[e board] to commence the action, and show that this demand has been refused or ignored" before he may file suit derivatively on

behalf of the company. *Parish v. Md. & Va. Milk Producers Ass'n*, 250 Md. 24, 81–82 (1968); *Oliveira v. Sugarman*, No. 24-C-14-001243, 2014 WL 7780336 at * 7 (Md. Cir. Ct. Oct. 30, 2014), *aff'd*, 226 Md. App. 524 (2016), *aff'd*, 451 Md. 208 (2017) ("[P]rior to initiating a lawsuit, a shareholder of a corporation must 'allege and prove he requested the directors to institute suit in the name of the corporation, and they refused.'" (quoting *Waller v. Waller*, 187 Md. 185, 192 (1946)). Failure to serve a pre-suit demand can result in the dismissal of a derivative complaint. *Werbowsky v. Collomb*, 362 Md. 581, 620–21 (2001) ("Obviously, if the complaint fails to allege sufficient facts which, if true, would demonstrate the futility of a demand, it is entirely appropriate to terminate the action on a motion to dismiss.").

In this case, it is uncontested that the plaintiff did not serve the Board with a pre-suit demand. Am. Compl. ¶ 87. The dispute is whether the plaintiff has alleged facts sufficient to generate an inference that demand was excused as futile.

Futility is the only exception to Maryland's demand requirement. *George Wasserman & Janice Wasserman Goldsten Family LLC v. Kay*, 197 Md. App. 586, 611 (2011) ("Shareholders can avoid the demand requirement *only* if demand is excused as 'futile.'" (emphasis added) (quoting *Bender v. Schwartz*, 172 Md. App. 648, 666 (2007)). The futility exception is "very limited" and is

> to be applied only when the allegations or evidence clearly demonstrate, in a very particular manner, either that (1) a demand, or a delay in awaiting a response to a demand, would cause irreparable harm to the corporation, or (2) a majority of the directors are so personally and directly conflicted or committed to the decision in dispute that they cannot reasonably be expected to respond to a demand in good faith and within the ambit of the business judgment rule.

Werbowsky, 362 Md. at 620; *Oliveira v. Sugarman*, 451 Md. 208, 229 (2017) (same) (quoting *Werbowsky*, 362 Md. at 620).

The plaintiff alleges that demand is excused in this case because the *entire* Board "is personally and directly conflicted and interested in this litigation[and] inherently committed to preserving their . . . self-compensation." Am. Compl. ¶ 88. The defendants counter that *no* member of the Board was disqualified because the mere fact that "[a] director . . . expects to derive a personal benefit from a corporate transaction" is insufficient to give rise to a disqualifying conflict. Defs.' Mem. at 19–20 (internal quotation marks omitted).

Although the demand futility exception "does not encompass every instance in which a majority of the board of directors is interested," *Oliveira*, 451 Md. at 229, the defendants concede that the *Werbowsky* standard is a matter of degree. It is indisputable that the defendants would have a conflict of interest in considering demand in this case. *Werbowsky*, 362 Md. 608 (stating that directors are conflicted where they "expect to derive [a] personal financial benefit" that will not "devolv[e] upon the corporation or all stockholders generally"); *see also, e.g.*, *Calma v. Templeton*, 114 A.3d 563, 576 (Del. Ch. 2015) ("[Courts are] skeptical than an individual can fairly and impartially consider whether to have the corporation initiate litigation challenging his or her own compensation . . . .") *and Oliveira*, 451 Md. at 222 n.4 ("[Maryland c]ourt[s] frequently look[ ] to Delaware courts for guidance on issues of corporate law."). Given the outsized nature of the award at issue, one can reasonably infer that the defendants are conflicted to a degree sufficient to excuse demand under *Werbowsky*. *See Weinberg ex rel. BioMed Realty Trust, Inc. v. Gold*, 838 F. Supp. 2d. 355, 360 (D. Md. 2012) ("It is certainly arguable that the . . . directors who . . . are beneficiaries of the [challenged] compensation plan are 'are so personally and directly conflicted . . . that they cannot reasonably be expected to respond to a demand in good faith and within the ambit of the business judgment rule.'" (quoting *Werbowsky*, 362 Md. at 620)).

In the alternative, the defendants argue that the Court should remain untroubled by the plaintiff's allegations of self-dealing because they implicate less than a majority of the Board. *See* Defs.' Mem. at 19. Because the June 2016 stock award was recommended by the Board's four-member Compensation Committee, the defendants argue, demand was not futile: at least a bare majority of Bancorp's nine-member board of directors would have been able to fairly consider the plaintiff's pre-suit demand. *Id.*

The first flaw in the defendants' logic is that it is out of step with the facts alleged in the complaint. Bancorp's Compensation Committee is assigned two tasks: to make "recommendations to the Board from time to time regarding the compensation of non-employee directors," Am. Compl. ¶ 32 (internal quotation mark omitted), and to "determine[ ] the compensation of [Bancorp]'s executive officers," *id.* ¶ 36. Construed in the light most favorable to the plaintiff, these allegations give rise to an inference that, at least insofar as concerns non-employee directors, the June 2016 stock award was recommended by the Committee but *approved* by the Board as a whole.

The second flaw is that the defendants' logic is out of step with the law. Demand futility does not turn on whether a majority of the Board was involved in *making* a challenged decision. *Werbowsky*, 362 Md. at 620; *Weinberg*, 838 F. Supp. 2d. at 360 ("[M]ere participation in or approval of the challenged transaction by directors does not excuse demand." (citing *Werbowsky*)). The question is whether a majority of the Board has a personal interest in *not disturbing* the decision that is sufficiently significant to overwhelm their better judgment. *See id.*; *accord In re Regions Morgan Keegan Securities, Derivative, ERISA Litig.*, 694 F. Supp. 2d 879, 884 (W.D. Tenn. 2010) (concluding that, under Maryland law, a change in board composition would not require "a plaintiff in a pending suit to make demand on the new board").

Each member of the Board has a personal financial interest in the June 2016 stock award in excess of $900,000. Am. Compl. ¶ 46. The plaintiff avers that defendant Cuddy's interest in the June 2016 stock award is nearly four times larger than his total compensation in 2015, *compare id.* ¶ 37 *with* ¶ 66, and that the non-employee defendants' interest in the stock award is more than eleven times larger than their average total compensation in 2015, *compare id.* ¶ 35 *with* ¶ 46. Especially in light of its disproportionate relationship to their prior annual compensation, the sizable personal financial benefit that Board members stand to realize if the June 2016 stock award remains undisturbed is sufficient to give rise to an inference that the Board "cannot reasonably be expected to respond to a demand in good faith and within the ambit of the business judgment rule." *Werbowsky*, 362 Md. at 620; *Weinberg*, 838 F. Supp. 2d at 360.

In marshalling against this conclusion, the defendants warn that to permit this suit to proceed "would allow a single shareholder plaintiff to challenge every decision by a compensation committee with respect to director compensation and gut the demand requirement." Defs.' Reply at 6. The defendants' concerns are overstated. The fact that the complaint alleges sufficient facts regarding demand futility to survive a motion to dismiss does not conclusively determine whether demand was, in fact, futile. *Werbowsky*, 362 Md. at 621 ("[T]he issue [of demand futility] is not foreclosed simply because the complaint is sufficient."). To survive a 2-322(b)(2) motion, the plaintiff's allegations need only give rise to a *reasonable inference* of demand futility. *See Arffa*, 404 Md. at 381 ("[A motion to dismiss should be granted] only if the alleged facts and permissible inferences, so viewed, would, if proven, nonetheless fail to afford relief to the plaintiff." (citations omitted)); *Werbowsky*, 362 Md. at 620–21 ("Obviously, if the complaint fails to allege sufficient facts which, if true, would demonstrate the futility of a demand, it is entirely appropriate to terminate the action on a motion

to dismiss.”). Before he may put his case to the jury, the plaintiff bears the additional burden of *proving* futility. *Id.* at 621 (“Demand futility . . . is a preliminary issue . . . that needs to be resolved before the court undertakes to consider the merits, and, as the plaintiffs conceded, that is resolvable by the court, not a jury.”). The defendants will have at least two opportunities to test plaintiff’s allegations of futility against the evidence before this case could proceed to trial. *Id.* at 621–22 (sanctioning consideration of demand futility pursuant to both Maryland Rules 2-501 and 2-502).

Nor is a complaint per se sufficient to excuse demand merely because it pertains to director compensation. The complaint *in this case* is sufficient because, in alleging that the June 2016 stock award provided non-employee directors more than a decade’s typical compensation in a single transaction, it generates an inference that the Board cannot reasonably be expected to respond in good faith to a demand that they relinquish its benefits. *See id.* at 620. The defendants could counteract this inference by producing evidence that, for example, shows that their income from non-Bancorp sources was sufficiently large that the June 2016 stock award would not overwhelm their better corporate judgment. *Id.* (“[The futility exception is] to be applied only when the allegations or evidence clearly demonstrate, in a very particular manner, . . . that . . . a majority of the directors are *so personally and directly conflicted or committed to the decision in dispute* that *they cannot reasonably be expected to respond to a demand in good faith and within the ambit of the business judgment rule*.” (emphasis added)). It would not be sufficient for a plaintiff to allege that corporate directors voted to pay themselves. It is sufficient that *this* plaintiff has alleged that Bancorp’s corporate directors voted themselves a *windfall*.

The defendants also argue that the Board’s interest is irrelevant in determining whether demand was futile because even a conflicted board could have formed a special litigation

committee "composed of independent, disinterested directors" to consider the plaintiff's demand. Defs.' Mem. at 21–22 (citing *Boland v. Boland*, 423 Md. 296, 332 (2011) (discussing special litigation committees conceptually)). As the plaintiff notes, the defendants' position is tantamount to "claim[ing] that demand is never futile because a board should always be given an opportunity to appoint such a committee." P.,'s Opp'n at 15. Although the demand futility exception is disfavored by Maryland courts, the Court of Appeals recently reaffirmed its existence. *Oliveira*, 451 Md. at 229. This Court cannot independently extinguish it.

For the foregoing reasons, the allegations contained in the Amended Complaint are sufficient to give rise to an inference that demand was excused as futile in this case. The Court will deny the motion to dismiss on these grounds.

b. **Business Judgment Rule**

In the alternative, the defendants move to dismiss the complaint because, they allege, its allegations are insufficient to rebut the presumption of good faith afforded corporate directors by the business judgment rule. Defs.' Mem. at 23–26. The rule—codified in Maryland as § 2-405.1 of the Corporations & Associations article—provides "a presumption that directors of a corporation acted in good faith and in the best interest of the corporation." *Wittman v. Crooke*, 120 Md. App. 369, 376 (1998). The demand requirement is an outgrowth of this presumption. *See Boland*, 423 Md. at 328.

In these circumstances, the business judgment rule "has no application." *See Werbowsky*, 362 Md. at 609. The rule's

> protection . . . can be claimed only by "disinterested directors whose conduct otherwise meets the tests of business judgment." From the standpoint of interest, "this means that directors can neither appear on both sides of a transaction nor expect to derive any personal financial benefit from it in the sense of self-dealing, as opposed to a benefit which devolves upon the corporation or all stockholders generally." Accordingly, if that kind of director interest is present and the

> transaction is not approved by a majority consisting of disinterested directors, the business judgment rule *has no application*.

Id. (emphasis added) (quoting *Aronson v. Lewis*, 473 A.2d 805, 812 (Del. 1984)). As explored in greater detail above, the entire nine-member board stands on both sides of the 2016 stock award. At least for purposes of the motion to dismiss, their vote in favor of the award is not entitled to the protection of the § 2-405.1 business judgment rule.

c. **Shareholder Ratification**

The defendants argue that the plaintiff's claims are barred because the June 2016 stock award was, they contend, ratified by Bancorp's stockholders. Defs.' Mem. at 26–27. Maryland law shields transactions between a corporation and its directors against stockholder derivative suits if, after the directors' interest is disclosed, the "transaction is authorized, approved, or ratified by a majority of the votes cast by the [disinterested] stockholders entitled to vote." Md. Code Ann., Corps. & Ass'ns § 2-419(a) & (b)(1)(ii). On April 21, 2016, Bancorp stockholders approved the Board's proposed Omnibus Incentive Plan (the "stock plan"), which set aside 3.5 million shares of Bancorp stock to be disbursed at the Board's discretion to corporate employees. Am. Compl. ¶¶ 41–42. The defendants contend that in doing so, the stockholders approved of the June 2016 stock award. Defs.' Mem. at 26–27. "The [Bancorp] Board is not liable to [Bancorp] stockholders," the defendants assert, "for acting pursuant to and within the confines of a Stock Plan that was approved by a majority of disinterested [Bancorp] shareholders." *Id.* at 27.

The defendants misapprehend the issue. The plaintiff does not assert that adopting the June 2016 stock award was somehow beyond the Board's power, but instead that, in adopting it, the Board *abused* its power. P.,'s Opp'n at 16. That the June 2016 stock award was not *ultra vires* is no answer to an allegation of improper self-dealing. *See Werbowsky*, 362 Md. at 598–99 ("As a general rule, the business and affairs of a corporation are managed under the direction of

its board of directors. . . . As a check on this broad managerial authority, [however,] directors are required to perform their duties in good faith . . . ."); *accord, e.g.*, *Calma v. Templeton*, 114 A.3d 563, 576 n.45 (Del. Ch. 2015) ("[The] grant of authority for directors to set their compensation, [is] not a statutory safe harbor . . . for director compensation decisions."); *Sample v. Morgan*, 914 A.2d 647, 664 (Del. Ch. 2007) ("[Directors'] authority must be exercised consistently with equitable principles of fiduciary duty.").

"Transactions between a corporation and any of its directors are not void or voidable as long as the transactions are disclosed to the shareholders *prior to* ratification by the majority of disinterested stockholders." *Wittman v. Crooke*, 120 Md. App. 369, 377 (1998) (emphasis added). The stock plan, however, "did not inform stockholders that the Board intended to give ***themselves*** a 'one-time' stock award of over 1 million shares of stock." Am. Compl. ¶ 41. Therefore, the April stockholder vote approving the stock *plan* was not "approval" of the June 2016 stock *award* within the meaning of and warranting protection under § 2-419.

d. **Count II**: **Unjust Enrichment**

Finally, the defendants ask that Count II of the Amended Complaint be dismissed because the plaintiff has "not adequately allege[d] the elements of an unjust enrichment claim." Defs.' Mem. at 28. To survive a motion to dismiss a claim for unjust enrichment, a complaint must allege (1) that a benefit was conferred by the plaintiff upon the defendant or defendants, (2) that the defendant(s) have appreciated or acknowledged the benefit, and (3) that the acceptance or retention of the benefit by the defendant(s) without payment of its value would, under the circumstances, be inequitable to the plaintiff. *E.g.*, *Everhart v. Miles*, 47 Md. App. 131, 136 (1980) (citing *Willison on Contracts* § 1479 (3d ed. 1970)). The plaintiff has alleged all three elements: he contends on behalf of Bancorp that the corporation gave to the defendants stock

valued in excess of $14 million, Am. Compl. ¶ 45, that the defendants knew of the award, *see id.*, and that the award, when weighed against bonuses given by similarly-situated corporations under similar circumstances, was out of proportion to the services rendered by the defendants, *id.* ¶¶ 47, 50, 62, 76. In sum, the complaint "allege[s] facts that, if proved, would entitle [Bancorp] to relief" under a theory of unjust enrichment and that claim therefore is not subject to dismissal. *See Pittway Corp. v. Collins*, 409 Md. 218, 238 (2009).

For the foregoing reasons, it is, this 8th day of August 2017, hereby

ORDERED that the defendant's Motion to Dismiss, Dkt. No. 6, is **DENIED.**

Judge Pamela J. White
Judge's Signature Appears on Original Document

Judge Pamela J. White, Part 7
Circuit Court for Baltimore City

NOTICE TO CLERK:
Please send copies to all parties.